

### **REMARKS/ARGUMENTS**

This Reply is submitted in a response to the final Office Action mailed November 4, 2008. Claims 1-44 are pending, and Claims 45-49 have been withdrawn as a result of a restriction requirement. As explained in further detail below, Applicants respectfully submit that independent Claim 1 is currently distinguishable from the cited reference. In light of the subsequent remarks, which do not raise new issues, Applicants respectfully request reconsideration and allowance of the claims.

In Applicants' previous response, Applicants argued that U.S. Patent No. 6,981,985 to Brown et al. does not teach or suggest that a coating extends substantially over an area between the struts, as recited by independent Claim 1. Although it appears that Applicants arguments were persuasive, the Examiner now rejects Claims 1-44 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,699,278 to Fischell et al. Independent Claim 1 currently recites that the medical appliance includes a coating coupled with the scaffolding such that the exterior surface of the scaffolding is raised with respect to the coating extending substantially over an area between the struts of the scaffolding.

Applicants respectfully disagree with the rejection. Namely, Fischell in no way teaches or suggests that a coating extends **substantially over an area between the struts**, such as to prevent epithelialization of the stent. In the Office Action, the Examiner cites to FIGS. 6-9 of Fischell as disclosing the claimed invention, but Fischell makes no mention of a coating with respect to this embodiment. Therefore, Applicants request clarification regarding what particular aspects of FIGS. 6-9 anticipate independent Claim 1. Applicants note that FIGS. 12A-C of Fischell illustrate a stent having a highly radiopaque coating that is thicker on the end of the strut members (52) as compared to the thickness on either the flex links (54) or the central sets of strut members (56). Fischell further discloses that the entire stent may be coated to provide an exterior stent surface that is formed of a single metal, and that the coating may be a radiopaque metal and may be additionally coated with a flexible plastic. However, Fischell discloses that the coating is only applied to the stent surface and is not applied between the struts. In contrast to the claimed invention, FIGS. 12A-C of Fischell only depict a stent having a radiopaque

coating applied to the stent struts rather than substantially between the struts. Although Fischell also discloses that the stent could be coated with a flexible plastic, Fischell nowhere teaches or suggests that the plastic coating is applied substantially over an area between the struts.

Moreover, Claim 1 recites that the scaffolding is raised with respect to the coating, which is also not taught or suggested by Fischell. A stent coated in such a manner may reduce the amount of coating surface area that contacts the target lumen in order to only partially limit cilia function and to not significantly affect mucociliary clearance. Clearly, the coating of Fischell is directed to an entirely different purpose, including providing radiopacity and corrosion resistance, and is not raised with respect to a coating extending over an area between the struts since there is no coating between the struts.

Therefore, Applicants submit that Fischell fails to teach or suggest independent Claim 1 and that the rejection under 35 U.S.C. §102(e) is overcome. Because the dependent claims include each of the recitations of a respective independent claim, Applicants further submit that the dependent claims are also allowable for at least those reasons discussed above with respect to independent Claim 1.

Although the dependent claims are allowable for at least those reasons discussed above, Applicants respectfully submit that several of the dependent claims are further patentably distinct from the cited references, taken individually or in combination. In fact, the Examiner simply dismisses several of the dependent claims as being anticipated by Fischell without providing any evidence supporting such conclusions. As such, Applicants submit that the Examiner has failed to satisfy the requirement under MPEP §707.07(f) to provide a clear explanation for the rejection of the dependent claims and requests clarification with respect to the rejection of the dependent claims.

In any event, Applicants respectfully submit that Fischell does not teach or suggest that the coating is coupled with the scaffolding such that both the struts and the area between the struts are coated, wherein the coating is of sufficient thickness to prevent the medical appliance from becoming epithelialized when installed in the desired portion of the patient's anatomy. As disclosed in the present application, the stent may be coated to prevent epithelialization of the stent. Preventing epithelialization allows the stent to be removed or repositioned if desired and

Appl. No.: 10/669,450  
Amdt. dated December 11, 2008  
Reply to Office Action of November 4, 2008

maintains the patentcy of the stent lumen. Fischell nowhere teaches or suggests that both the stent and the area between the struts are coated in order to prevent epithelialization. In fact, because the coating does not extend between the struts, the stent of Fischell would become epithelialized. Thus, Fischell also does not teach or suggest Claim 2.

### CONCLUSION

In view of the amended claims and remarks presented above, which do not raise new issues, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 50-2764.

Respectfully submitted,



Trent A. Kirk  
Registration No. 54,223

**Customer No. 37305**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON DECEMBER 11, 2008.